HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.4724 of 2000
Date of decision : 07.02.2007

Nathu Ram **.....Petitioner**
versus
Ram Chander and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Sh.Atul Lakhanpal, Advocate for the petitioner
Mr.B.R.Gupta, Advocate for the respondents.

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JUDGMENT

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order dated 19.9.2000 passed by the learned trail Court, whereby an application filed by defendant No.6 for filing the written statement on his behalf, was declined.

As per the case set up, the present petitioner (defendant No.6) is stated to have suffered a decree in favour of his daughter on 19.7.1989. Thereafter, defendant No.5, daughter of defendant No.6, suffered another decree in favour of her nephew i.e. another son of defendant No.6, on 27.9.1995. The present suit for declaration was filed on 6.1.1998 challenging the consent decree suffered by defendant No.6 on 19.7.1989 and the consequent decree dated 27.9.1995 suffered by defendant No.5. In the said suit, a written statement was filed on behalf of defendant Nos.5 & 6 admitting the claim of the plaintiff. Later on, when defendant No.6 appeared as witness as DW-1, he denied the filing of the written statement alongwith his daughter Krishna. Thereafter, the present application was

filed for filing a written statement on the ground that he has never engaged Sh.Jitender Thakar as his counsel neither he had instructed him to file the written statement on his behalf. In fact, his signatures were obtained by plaintiff's counsel on blank paper when he went to Fatehabad and the written statement has been prepared on the blank papers.

The learned trial Court declined the application, inter alia, on the ground that the petitioner has not been able to show as to whether signatures were obtained on the blank papers by the counsel nor there is any reason given by defendant No.6 as to how and in what circumstances he can file second written statement. It is also found that the pleading can be amended but substitution of pleading taking totally contrary to that of original cannot be allowed.

The finding recorded by the learned trial Court that defendant No.6 has not been able to show as to whether signatures were obtained on the blank papers by the counsel cannot be accepted as in fact no opportunity was granted to the defendant No.6 to prove such fact. Such fact could be proved by defendant No.6 only if he was permitted to file written statement subject to the proof of the fact that first written statement was not filed with intention of filing of such written statement. In "***1991 (2) PLR-266, Gujjar Singh versus Gulzar Singh",*** this Court has permitted the defendant to amend the written statement which has the effect of withdrawing the admission. It was found that the admission earlier made in the written statement was apparently erroneous and on assumed facts and in such a situation a party cannot be refused to amend its pleadings. Similarly, in ***1991 (2) PLR-616, Kehar Singh versus Balraj Singh and another,"*** this Court permitted the plaintiff to amend

the plaint as it was found that if the plaintiff is not given opportunity to back out of the wrong admission, he would not be able to show that the admission was wrong. ***"1992 (2) Revenue Law Reporter-11, Mukhtiar Kaur & Piar Kaur versus Jarnail Singh,*** was a case where the defendant filed a written statement admitting the claim of the plaintiff. The statement of the defendant was also recorded wherein he admitted the plaintiff's claim, but before the adjourned date of hearing, defendant died and his legal heirs made an application for brought on record as legal representatives of the deceased and subsequently filed an application for amendment of the written statement. In revision petition, this Court found that the learned trial Court should have gone into the question as to whether an imposter was put in place of the defendant to appear in the Court, filed the written statement and admitted the claim on behalf of the said defendant. The said question could either be decided in a fresh suit or in the said suit. This Court directed the trial Court to decide the question as to whether imposter was put in place of the defendant to file written statement or to make statement in the Court.

Recently, in a judgment reported as "***2006 (3) P.L.R.437, Gautam Sarup versus Anand Sarup and others",*** considering the various judgments, it was found that the defendant has a right to prove the admission made in the written statement is not correct and erroneous. However, to prove that such admission is not correct and is erroneous, an opportunity has to be given to the said defendant. It was so held in the following manner:-

> "Keeping in view the principles laid down in the aforesaid judgments, I am of the opinion that defendant No.6 has a right to prove that the admission made in the

written statement dated 30.3.2000 is not correct and erroneous. If a person proves that the admission is not binding for one or more reason, the Court can refuse to take into consideration the admission allegedly made. Such rights to prove admission wrongly made can be exercised only if an opportunity is given to the parties to enter into the play field and to prove such admission as wrong, incorrect and erroneous. If the amendment is to be declined, an opportunity to prove that the admission is wrong is not even made available which, in my opinion, would be unjustified."

In view of the above judgments, I deem it appropriate to allow the petitioner to amend the written statement. However, it shall be open to the trial Court to adjudicate upon the question alongwith main suit itself whether the first written statement filed by the present petitioner admitting the claim of the plaintiff, was a voluntary act or not and in the light of the said finding to decide the the main suit.

Thus, the present revision petition is allowed. The impugned order dated 19.9.200, passed by the learned trial Court is set-aside.

Parties through their counsel are directed to appearing before the learned trial Court on 26.3.2007 for further proceedings, in accordance with law.

(HEMANT GUPTA)
JUDGE

February 7, 2007
**mohinder*